

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>EDWARD C. SCOTT</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. CIV-06-197-F</b>
	)	
<b>ERIC FRANKLIN, Warden,</b>	)	
	)	
<b>Respondent.</b>	)	

**REPORT AND RECOMMENDATION**

Petitioner, a state prisoner appearing *pro se*, filed this action under 28 U.S.C. § 2254 seeking a writ of habeas corpus. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Respondent filed a response to the petition and the relevant state court record. Petitioner replied to the response, placing the matter at issue. It is recommended that this action be dismissed as moot by reason of Petitioner's recent death.

Petitioner challenged his conviction pursuant to a plea of guilty to two counts of distributing a controlled dangerous substance and one count of conspiracy to distribute a controlled dangerous substance, for which he was sentenced to forty years of imprisonment on each count, with the sentences ordered to be served concurrently. Case No. CF-2001-24, District Court of Stephens County. The undersigned takes judicial notice of the official website of the Oklahoma Department of Corrections (DOC) which describes Petitioner's status as "inactive" and reflects a "discharge date" of March 22, 2007, notwithstanding Petitioner's forty year sentences imposed in 2002. See Oklahoma Department of Corrections, at <http://docapp065p.doc.state.ok.us/servlet/page?>

\_pageid=393&\_dad=portal30&\_schema=PORTAL30&SearchMode=Basic&first\_name=Edward&last\_name=Scott&SearchAll=ALL (accessed May 10, 2007). Pursuant to a telephone conversation with prison officials, the undersigned has verified that Mr. Scott died on March 22, 2007, in the custody of the James Crabtree Correctional Facility in Helena, Oklahoma.

Petitioner's death moots his petition for a writ of habeas corpus, and the petition should therefore be dismissed. *See Garceau v. Woodford*, 399 F.3d 1101 (9<sup>th</sup> Cir. 2005) (because petitioner's death rendered habeas action moot, case remanded to district court with instructions to dismiss petition); *Hillman v. McCaughtry*, 14 F.3d 350 (7<sup>th</sup> Cir. 1994) (per curiam) (remanding appeal in § 2254 action to district court with instructions to dismiss as moot due to petitioner's death).

#### **RECOMMENDATION**

For these reasons, it is the recommendation of the undersigned Magistrate Judge that the petition for writ of habeas corpus be dismissed as moot. Any objection to this Report and Recommendation must be filed with the Clerk of this Court by the 31st day of May, 2007, in accordance with 28 U.S.C. § 636 and Local Civil Rule 72.1. Failure to make timely objection to this Report and Recommendation waives any right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d

656 (10<sup>th</sup> Cir. 1991). This Report and Recommendation disposes of the issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 11th day of May, 2007.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE